

NOT FOR PUBLICATION - FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

L & J Crew Station, LLC)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2003-11
)	
Banco Popular de Puerto Rico, and)	
First Bank Puerto Rico)	
)	
Defendants.)	
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ATTORNEYS:

Clive Rivers, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Gregory Hodges, Esq.
St. Thomas, U.S.V.I.
For the defendants.

MEMORANDUM

Moore, J.

On August 20, 2003, I granted the defendants' motion to dismiss the plaintiff's amended complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. *See L&J Crew Station, LLC v. Banco Popular de Puerto Rico*, 278 F. Supp. 2d 547 (D.V.I. 2003). As the prevailing parties in this action, the defendants seek an award of \$42,461.00 in attorneys fees pursuant to 5 V.I.C. § 541. Specifically, Banco Popular de Puerto Rico requests \$21,329.50 in attorneys fees, whereas FirstBank Puerto

Rico requests \$21,131.50 in attorneys fees.¹ In support of their requests, the defendants have filed an affirmation of Gregory H. Hodges, Esq., in which Attorney Hodges affirms that five attorneys and two paralegals spent 90.2 hours and 89.6 hours defending, respectively, Banco Popular and FirstBank against the plaintiff's suit.²

The plaintiff has opposed the defendants' requests for attorneys fees, arguing that such an award is not warranted because its claims were based on federal law, and therefore the local attorneys' fees statute is inapplicable. The plaintiff is correct that the Virgin Islands Code permits an award for *only* attorneys' fees associated with litigation over local statutes. See *Figueroa v. Buccaneer Hotel Inc.*, 188 F.3d 172, 183-84 (3d Cir. 1999); *Thorstenn v. Barnard*, 883 F.2d 217, 218 (3d Cir. 1989). The Third Circuit Court of Appeals has instructed that "in awarding fees to a prevailing party under section 541, which is a provision of territorial law, the court must subtract fees and costs associated with federal claims, as section 541 is only applicable to fees for the litigant who succeeds in pursuing Virgin Islands territorial claims." *Figueroa*, 188 F.3d at 183.

¹ Neither defendant has requested an award of the costs they incurred in defending this matter.

² In support of this affirmation, the defendants have attached as exhibit one the billing records of the five attorneys and two paralegals that worked on this matter.

Five of the seven counts in the plaintiff's amended complaint explicitly allege violations of federal or constitutional law, for which the defendants may not recover under section 541 attorneys fees incurred in their defense.³ The remaining counts, namely, counts four and five, do not explicitly refer to either federal or local law. Both counts were vaguely drafted, making it difficult to determine, simply by the plain language of the amended complaint, whether the plaintiff was alleging a violation of federal or territorial laws. Having construed count four as an allegation of discrimination in violation of federal law, attorneys fees in its defense also are excluded from section 541. The plaintiff's allegation in count five that the defendants "cornered the money transfer market," without reference to any specific statute, would force a reasonable attorney to investigate potentially applicable local laws in preparing an adequate defense. Consequently, pursuant to 5 V.I.C. § 541, the defendants may be entitled to an award of attorneys fees for the expenses they incurred in defending against the allegations presented in count five.

³ Specifically, count one alleges violations of the Clayton Act, 15 U.S.C. §§ 13(e), 14, counts two and three allege violations of the Sherman Act, 15 U.S.C. §§ 1-7, count six alleges the defendants improperly relied on the USA Patriot Act, Pub. L. No. 107-56, 115 Stat. 272 (2001), and count seven alleges an "unjust taking," which is an allegation of a violation of the plaintiff's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution.

The decision whether to award these attorneys' fees is entirely within my discretion. See 5 V.I.C. § 541(b). Given the vagueness of the plaintiff's amended complaint, and the lack of any viable claim presented therein, I find that the plaintiff unnecessarily forced the defendants to incur attorneys' fees in this matter. Thus, I will exercise my discretion to award attorneys fees associated with defending against the allegations levied in count five.

In determining what constitutes a proper fee award for those expenses, I must calculate a "lodestar" amount, i.e., the reasonable number of hours expended at the reasonable hourly rate. See *Jo-Ann's Launder Center, Inc. v. Chase Manhattan Bank, N.A.*, 31 V.I. 226, 234; 1995 WL 78299 at *5 (D.V.I. 1995). In assessing the reasonable number of hours expended, I must focus on "the significance of the overall relief obtained . . . in relation to the hours reasonably expended on the litigation." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983).

Here, the defendants were successful in their Rule 12(b)(6) motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted. After reviewing the billing records of the defendants' attorneys, I find it appropriate to reduce the total hours spent by the defendants' attorneys on this matter by six-sevenths, thereby reflecting the

proportion of allegations in the amended complaint that raised potential issues of territorial law. Thus, the reduced hour amount for Banco Popular is 12.89 hours ($90.2 \div 7$) and for FirstBank is 12.80 hours ($89.6 \div 7$). Numerous staff conferences with the five attorneys and two paralegals assigned to this matter and the duplicative work performed by those individuals necessitates a further reduction of two hours for each defendant, bringing the reasonable number of hours spent defending against count five to 10.89 for Banco Popular and 10.80 for FirstBank. Multiplying these hour amounts times the local reasonable hourly rate of \$200.00 per hour, the lodestar amount is \$2,198.00 for Banco Popular and \$2,160.00 for FirstBank. Accordingly, I will award \$2,198.00 in attorneys' fees to Banco Popular and \$2,160.00 in attorneys' fees to FirstBank. An appropriate order follows.

ENTERED this 9th day of November, 2004.

FOR THE COURT:

_____/s/_____
Thomas K. Moore
District Judge

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Clive Rivers, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Gregory Hodges, Esq.
St. Thomas, U.S.V.I.
For the defendants.

ORDER

Moore, J.

For the reasons stated in the memorandum of even date, it is
hereby

ORDERED that the plaintiff shall pay \$2,198.00 to Banco
Popular and \$2,160.00 to First Bank for attorneys fees each
defendant incurred in defending against the plaintiff's claims.

ENTERED this 9th day of November, 2004.

For the Court

_____/s/_____
Thomas K. Moore
District Judge

ATTEST:
WILFREDO MORALES
Clerk of the Court

By:_____
Deputy Clerk

Copies to:
Hon. G.W. Barnard
Clive Rivers, Esq.
Gregory Hodges, Esq.
Mrs. Jackson
Jeffrey Corey, Esq.